

1 UNITED STATES BANKRUPTCY COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 RIVERSIDE DIVISION

4 In re:) Case No. RS 04-21049 PC
5)
6 STEPHEN W. BRITTAIN and) Chapter 7
GABRIELA M. BRITTAIN,)
7) Date: May 9, 2005
8) Time: 9:30 a.m.
9) Place: U.S. Bankruptcy Court
Debtor(s).) Courtroom 303
3420 Twelfth Street
Riverside, CA 92501

10 *At the above captioned date and time, the court considered Trustee's (1) Objections to*
11 *Debtor's Exemptions re Bank Accounts, Business Commissions and Trailer; and (2) Motion for*
12 *Turnover and Accounting re Personal Property. The following is the text of the court's final*
13 *ruling which is attached to the minutes of the hearing. Because the court has determined that*
14 *the disposition constitutes a "reasoned explanation" for the court's decision within the scope of*
15 *the E-Government Act of 2002, the final ruling is posted to the court's Internet site,*
16 *www.cacb.uscourts.gov, in a text-searchable format as required by the act. The official record*
17 *remains with the minutes of the hearing.*

18 **FINAL RULING**

19 This objection to debtors' claim of exemptions, as amended, and motion for turnover of
20 estate property has been set for hearing on the notice required by L.B.R. 9013-1(a)(6)(B). L.B.R.
21 9013-1(a)(14). **Appearances are required.**

22 **Objections to Debtors' Claim of Exemptions.** The objections are sustained. A party in
23 interest may file an objection to the list of property claimed as exempt under 11 U.S.C. Section
24 522(l) within 30 days after the meeting of creditors held under section 341(a) is concluded or
25 within 30 days after any amendment to the list or supplemental schedules is filed, whichever is
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later. Fed. R. Bankr. P. 4003(b). Because the creditors' meeting has yet to conclude, the trustee's objections to debtors' claim of exemptions, as amended, are timely.

Bank Accounts: In amended Schedule C, debtors claim the funds on deposit in four separate bank accounts at Guaranty Bank exempt as "paid earnings" pursuant to C.C.P. Section 704.070(b)(2). Section 704.070(a) defines "paid earnings" as being "earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy." Section 706.011 defines "earnings" as being "compensation payable by an employer to an employee for personal services performed by such employee, whether denominated wages, salary, commission, bonus or otherwise."

According to the petition, debtor, Stephen W. Brittain, was self-employed doing business as Senior Benefits Insurance & Financial SE. A self-employed person is not an employee for purposes of C.C.P. Section 706.011. Moses v. DeVersey, 157 Cal. App. 3d 1071, 1074 (Cal. Ct. App. 1984). Therefore, the trustee's objection to debtors' amended claim of exemption in Guaranty Bank Account # 380-2915607 and Guaranty Bank Account # 213-4052609 is sustained.

Schedule I states that debtor, Gabriela M. Brittain is employed by Palms Springs Unified School District. In amended Schedule C, debtors claim as exempt the balance on deposit in Guaranty Bank Account # 213-4044405, noting that the "[b]alance in account has been there for over 11 months and is from debtors ear[n]ings from employment." Debtors also claim as exempt the balance on deposit in Guaranty Bank Account # 213-6155806, noting that the "[b]alance in account is from Debtor spouses earnings from her employer." Debtors have not responded to the objection nor provided any evidence establishing the portion, if any, on deposit in either account

1 attributable to "paid earnings" received by debtor, Gabriela M. Brittain, within 30 days of
2 bankruptcy. Accordingly, the trustee's objections to the debtors' claim of exemption in such
3 accounts is sustained.

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5 Gross Pending New Business Commissions. In amended Schedule C, debtors claim as
6 exempt gross pending new business commissions totaling \$2,240.96 pursuant to C.C.P. 706.050.
7 Section 706.050 addresses the impact of an earnings withholding order, and is not a statutory
8 basis for a claim of exemption. Even if the debtors were to amend Schedule C to claim an
9 exemption in the commissions under Section 704.070(b)(2), there is no evidence that the pending
10 new business commissions would qualify for exemption as "paid earnings." Therefore, the
11 trustee's objection is sustained.

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13 31-Foot Travel Trailer. In amended Schedule C, debtors claim as exempt a 31-foot travel
14 trailer used as a second home pursuant to C.C.P. Section 704.060(a)(3). Section 704.060(a)(3)
15 applies to commercial motor vehicles. A "commercial vehicle" is defined as being a motor
16 vehicle that is "used and maintained for the transportation of persons for hire, compensation, or
17 profit or designed, used, or maintained primarily for the transportation of property." Cal. Veh.
18 Code Section 260. Debtors admit that the travel trailer is used as a "second home" and is
19 "permanently" located in Blythe, CA. Accordingly, the court finds that the travel trailer is not a
20 "commercial vehicle." The trustee's objection is sustained.

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22 Motion for Turnover of Estate Property. The motion is granted. The trustee is required to
23 investigate the financial affairs of the debtor, and to collect and reduce to money the property of
24 the estate and close the estate as expeditiously as is compatible with the best interests of creditors.
25 11 U.S.C. Section 704. Conversely, debtor has an affirmative duty to surrender to the trustee all
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1 property of the estate, and any recorded information, including books, documents, records and
2 papers relating to property of the estate. 11 U.S.C. Section 521(4). Debtors who fail to turnover
3 such items to the trustee may, after notice and a hearing, be ordered to do so. 11 U.S.C. Section
4 542. Because the nature of the debtor's cooperation is coextensive with tasks to be performed by
5 the trustee in administering the estate, the failure or refusal of the debtor to turn over estate
6 property, documents and financial information is grounds for denial of discharge. *See In re*
7 Neese, 137 B.R. 797, 800-01 (Bankr. C.D. Cal. 1992).

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9 Accordingly, debtor is ordered to turnover and deliver to the trustee, not later than 30 days
10 from entry of the order granting this motion:

11 a. The sum of \$11,662.75 representing non-exempt funds in the above referenced bank
12 accounts at Guaranty Bank that constitute property of the estate, and
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14 b. The sum of \$2,240.96 in pending new business commissions that constitute property of
15 the estate.
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